

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RHOBAR, INC., RHOBAR DEVELOPMENT
ASSOCIATES, LLC., ACKERLY ASSOCIATES, LLC.,
SILVER HUNTINGTON ENTERPRISES, LLC.,
and SILVER HUNTINGTON REALTY, LLC.,

07 Civ. 6100 (BSJ) (HBP)

Plaintiffs,

-against-

**AFFIRMATION IN
SUPPORT OF MOTION**

HOWARD SILVER, 2 ON THE AISLE, INC.,
DAVID A. KAMINSKY & ASSOCIATES, P.C.,
MARTIN G. DOBIN, ESQ., a/k/a JERRY DOBIN, ESQ.,
and ELLIOT J. HURDY,

Defendants.
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I, James English, Esq., **affirm under penalty of perjury** that:

1. I, James English, Esq., represent the Defendants HOWARD SILVER, DAVID A. KAMINSKY & ASSOCIATES, P.C., and MARTIN G. DOBIN, ESQ., a/k/a JERRY DOBIN, ESQ. in the above entitled action, and respectfully move this Court to issue an order pursuant to Rule 6 of the Federal Rules of Civil Procedure granting Defendants leave to amend their Amended Answer to the Complaint, that the Amended Answer be deemed amended as provided herein, and for such other and further relief as may be just and proper.

2. The reason why I am entitled to the relief I seek is as follows.

3. According to the Scheduling Order dated December 3, 2007 (annexed hereto as **Exhibit A**), "[i]f Defendants seek to amend their answer, they are directed to serve and file an amended answer no later than December 10, 2007" (paragraph 2). Defendants served an amended answer on December 7, 2007 (please see Defendants' Amended Notice of Appearance/ Answer to Complaint under the Racketeer Influenced and Corrupt Organizations Act with Affirmative Defenses and Counterclaims, with Affidavit of Service, annexed hereto as **Exhibit B**).

4. Paragraph 3 of the above-mentioned Scheduling Order provides that "[a]ny motions to amend the pleadings...shall be made no later than March 3, 2008".

5. Upon further review of Plaintiffs' Complaint and Defendants' Amended Answer, and in light of the ambiguous manner in which Plaintiffs set forth their allegations throughout the six causes of action within their Complaint, I seek now to slightly extend and to clarify Defendant's First Separate Defense: Failure to State a Claim (paragraphs 98 through 102 of Defendants' Amended Answer).

6. I therefore hereby submit Defendants' Second Amended Notice of Appearance/ Answer to Complaint under the Racketeer Influenced and Corrupt Organizations Act with Affirmative Defenses and Counterclaims (annexed hereto as **Exhibit C**) and request that Defendants' Amended Answer be deemed amended in accordance therewith.

7. All substantive changes are confined to Defendant's First Separate Defense: Failure to State a Claim, and all changes therein are amplifications of the first sentence of paragraph 98 thereof ("Plaintiffs have failed to state a claim under the [RICO] statute"). However, for the purposes of clarity and comprehensiveness, the emendations would be beneficial.

8. Allowing Defendants' Answer to be amended thusly would not be prejudicial in any way to Plaintiffs.

WHEREFORE, I respectfully request that the Court grant this motion, as well as such other and further relief as may be just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
February 29, 2008

By: James English, Esq.
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